IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

RFA No.268 of 2000

Reserved on : 27.6.2007

Date of Decision : 27th July, 2007

HPSEB & Others …Appellants.

Versus:

Chhimbi Devi …Respondent.

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] *No*

For the appellants : Mr. Shrawan Dogra, Advocate.

For the respondent. None.

Sanjay Karol, J.

The appellants have assailed the judgment and decree dated 22.4.2000 passed by the learned District Judge, Chamba, H.P., in Civil Suit No. 1 of 1998 titled as Chhimbi Devi vs. H.P. State Electricity Board and others, whereby plaintiff has been awarded compensation to the tune of Rs.4,00,000/- along with interest @ 10% from the date of institution of the suit till the realization of the said amount.

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

For the purposes of convenience, the parties hereinafter referred to as the 'plaintiff/respondent' and the 'defendants/appellants'.

Plaintiff filed a suit for recovery of damages, inter alia, contending that on 5.4.1996, plaintiff along with her father had gone to the fields for repairing the retaining wall at village Arki, Post Office Khanni, Tehsil Bharmaur, Distt. Chamba. Plaintiff got electrocuted through the main high tension electricity wire which had loosened and come down to a height of 5 feet above the fields. She sustained injuries on different parts of her body and was taken to hospital at Bharmaur, from where she was referred to District Hospital, Chamba and then to Indira Gandhi Medical College, Shimla. Since her condition did not improve, she was taken to a private Nursing Home at Pathankot, where she remained admitted from 18.5.1996 to 2.8.1996. Plaintiff suffered pain agony and mental torture and has also become a disabled person at a young age of 19 years. All this happened due to the negligence on the part of the defendants, making her life full of physical and torture and also rendering the prospects of her marriage nil. Notice dated 28.6.1996 for payment of compensation for a sum of Rs.4,00,000/- was sent to the defendant, but to no avail.

Plaintiff was declared as indigent person and allowed to institute the suit as such after compliance of the provisions of Order 33 CPC.

Defendants in the written statement have admitted the fact that the plaintiff did receive injury due to coming in contact with the live wires which had loosened from 19 feet to 5 feet above the ground level, for the reason that the live conductor of 11 K.V. Lahal Feeder got tilted towards hill side resulting into slippage of stay wire of the structure. All this happened due to heavy rains and there was no negligence on the part of the defendants.

The trial Court based on the pleadings of the parties, framed the following issues, which were decided in the affirmative:-

> "1. Whether the plaintiff has sustained burn injury on her left hand due to the negligence of the defendants-HPSEB, as alleged? …OPP
>
> 2. If issue No.1 supra is proved, to what amount of compensation the plaintiff is entitled to? …..OPP
>
> 3. Relief.:"

The point for determination in the present appeal, therefore, is as to whether the plaintiff is entitled to compensation for the injuries sustained due to burns which are alleged to have been sustained due to the negligence of the defendants.

Plaintiff has stated on oath that the electric wire had loosened from a height of 19 feet to 5 feet from the ground surface i.e. fields. From the perusal of the statement of the witness what emerges is that due to heavy rains and storm on 4.4.1996, the live electric wire had loosened from its original

height of 19 feet to 5 feet. It is also admitted case of the parties that the plaintiff suffered injury due to her coming on contact with the said live wire.

Undisputedly plaintiff, as is evident from Ext.P11, has suffered 70% permanent disability. This certificate has been issued by the Board consisting of three medical experts chaired by the Chief Medical Officer, District Hospital, Chamba, H.P. She has obtained treatment at the IGMC, Shimla as is evident from her summary and discharge slip Exts.P7 & P8. She has been getting treatment for electric burns with associated injuries of infected burns. It is also admitted case of the parties that the matter was reported to the police and it took cognizance of the fact as is evident from Rapat Roznamcha Ext.P2. Thereafter, she has been undertaking treatment from Private Nursing Home at Pathankot as is evident from the discharge slip Ext. P9 and receipts Ext.P12. Demand was raised upon the defendant in terms of legal notice Ext.P6. Plaintiff has paid a sum of Rs.50,000/- towards medical expenses. This has been held to be true by the Court below, based on the receipts (enough material) on record. She has further incurred an expense of Rs.20,000/- towards travelling, which have also been held to be justifiable by the Court below The same is towards her travelling from Bharmaur to Chamba, Chamba to Shimla, Shimla to Chamba, Chamba to Pathankot and Pathankot to Bharmaur. Plaintiff has

been getting treatment from the hospital for almost 5 months, is also evident from the receipt Ext.P12.

On the issue of negligence on the part of the defendants, I am of the view that the defendants have not come forward with any explanation to explain that after having come to know that feeder pole has tilted due to heavy rains and storm as to why the defendants and its functionaries did not disconnect the electricity current through the stay wire to avoid any mishap.

In my view, the defendants were duty bound to have taken all precautionary measures, once having come to know that their being damaged equipment would definitely endanger the life of an individual. The fact that the defendants have been in breach of the duty and negligence, is evident from the fact that they have caused to omit to do something which a reasonable man, guided by considerations which ordinarily regulate the conduct of human affair, would do. The events which took place before the mishap imposed a duty upon the functionaries of the defendants to not only find out whether any pole had fallen or the live electricity wire was causing any damage to the human beings or animals and also having come to know of the same, to take all possible remedial measures in that regard. In the present case, except for saying that the wire slipped away and came down to height of 9 feet due to heavy rains and storm, no explanation is forthcoming as to what measures were taken to check the damage caused because of

the same. Defendants were duty bound to disconnect the electricity.

The defendants are in the business of setting up and maintaining high voltage transmission lines through which the electric current of high voltage is transmitted. Such operations are certainly hazardous in nature and the defendants are required to take extra care and precaution, as such operations can cause danger to life and property. The incident had taken place due to the acts of omission and commissions of the defendants. Sufficient evidence has come on record with regard to the negligence of the defendants. In the present case, the incident is such as in the ordinary course of things it would not have happened if the defendants, who are maintaining the high voltage electric transmission lines had taken proper care. The defendants as already stated hereinabove have not come out with sufficient explanation or evidence to show what care they had taken.

In the present case, the action of the respondent cannot be termed to be an act of God but is definably due to the negligence on the part of the defendants. It has come on record that there was sufficient time for the functionaries of the defendants to take remedial measures, who have failed to take any prompt action of disconnecting the electricity and checking the damage caused to their equipment. Because of the electrocution, plaintiff suffered injuries on different parts of her

body and had to undergo lot a mental and physical pain and agony.

For all the aforesaid reasons, I find no illegality or infirmity in the impugned judgment and decree dated 22.4.2000 passed by the learned District Judge, Chamba, H.P., in Civil Suit No. 1 of 1998 titled as Chhimbi Devi v. H.P. State Electricity Board and others. Consequently, the present appeal is dismissed.

(Sanjay Karol),
Judge.

27th July, 2007
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